In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 214

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

The petitioner is a mutual casualty insurance company, engaged primarily in writing automobile insurance. In addition to the stated annual premium, an applicant seeking a particular insurance coverage from the company for the first time must pay the so called "membership fee" prescribed for that coverage. The fee is divided 55% to the local agent, 18.7% to the district manager, and 26.3% to the state sales organization, and thus serves to defray a part of the costs of acquiring new business. Payment of the fee gives the applicant the right to be insured by the company upon payment of the annual premium, but only

those who are actually policyholders are "members" of the company with voting rights.

Under §§ 821(a)(2) and 823(1) of the Internal Revenue Code of 1954, as in force during the years involved (1955 and 1956), mutual casualty insurance companies were taxable on "gross premiums (including deposits and assessments) written or received on insurance contracts during the taxable year." The question is whether "gross premiums" as there used includes the "membership fees" charged by petitioner. The court of appeals, reversing the district court, held that the fees were taxable as "premiums."

The decision below is correct; there is no conflict of decisions; and the question is of only limited importance even for mutual casualty insurance companies, the method of taxing such companies having been substantially changed by the Revenue Act of 1962, § 8, 76 Stat. 960, 989–999. The petition for certiorari should be denied.

Respectfully submitted.

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JULY 1963.